

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOANNA VARGAS, AS EXECUTRIX	:	
OF THE ESTATE OF JUSTINO	:	CIVIL ACTION
VARGAS, AND IN HER OWN	:	
RIGHT	:	NO. 1:16:CV-01657-YK
	:	
PLAINTIFF,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
PENN STATE HERSHEY MILTON	:	
S. HERSHEY MEDICAL CENTER	:	
DEFENDANT.	:	

PLAINTIFF'S PRETRIAL MEMORANDUM

Date conference was held by counsel: May 24, 2018

A. Statement as to Federal Court Jurisdiction:

This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, because the amount in controversy as to Plaintiff vastly exceeds the jurisdictional requirements to guarantee a jury trial, exclusive of interest and costs, and because Defendants are incorporated and have their principal place of business in a state other than the state in which the named individual and representative Plaintiff reside. This Court has personal jurisdiction over the Defendant because all of the actions herein occurred in this judicial district.

B. Summary Statement of Facts and Contentions as to Liability:

This medical negligence lawsuit involves a few disputed claims. The disputed claims are that the decedent was improperly and prematurely discharged from the hospital after being admitted for a gastrointestinal bleed. Plaintiff further claims that the defendant's personnel failed to identify the source of the bleed. Finally, the plaintiff claims that the defendant's personnel, knowing that the decedent was intending to

travel via a commercial airliner to Florida, failed to appreciate the risk to the decedent in light of the recent GI bleed and the physiologic effects that the rapid pressure changes due to the change in cabin pressure will do to the colon. The defendant denies that the discharge, the diagnostic plan, or the flight was improper.

C. Statement of Undisputed Facts:

Please reference the defendant's Pretrial Memorandum.

D. Damages

(1) Principal injuries sustained: Death, pain and suffering due to a fatal hemorrhage occurring while in an airliner at cruising altitude, emotional distress claims for the widow.

(2) Hospitalization and convalescence: N/A

(3) Present disability: Death

(4) Special monetary damages, loss of past earnings, medical expenses, property damages, etc.: See, Plaintiff's economic expert report attached hereto as Exhibit "A."

(5) Estimated value of pain and suffering, etc.: disputed; Plaintiff has demanded \$4.5 million to settle the claims.

(6) Special damage claims: No liens.

E. Plaintiff's Witnesses

Plaintiff intends to call to testify, or reference testimony, from the following witnesses:

1. Amy Welch, M.D.
2. Daniel Lotner, M.D.
3. Isabel J. Brea, M.D.
4. Charles E. Dye, M.D.
5. Simon Mucha, M.D.

6. Robert Thomas, Jr., M.D.

7. Joanna Vargas

8. Justin Vargas, Jr.

9. David Vargas

10. Adam Vargas

11. Edward Vargas

12. Justin Philip Vargas

13. Philip Cappuccio

14. Jerry Ray

15. Neil Julie, M.D., plaintiff's expert, will testify on issues related to liability, causation, and damages consistent with the opinions set forth in his expert reports attached hereto as Exhibits "B" and "C" as well as his deposition testimony.

16. David Hopkins, plaintiff's expert, will testify on economic damages consistent with the opinions set forth in his expert report attached hereto as Exhibit "A."

F. Plaintiff's Expert Witnesses

Neil Julie, M.D. is a board certified gastroenterologist. Dr. Julie will testify that: "Penn State Hershey Medical Center did not meet the standard of care in their treatment of Mr. Vargas. The patient had reported two profuse GI bleeds with red blood per rectum that resulted in hypotension, tachycardia and that had led to acute anemia. In addition, since the GI procedures did not render a clear diagnosis, Mr. Vargas should have been kept in the hospital for a period of several days for observation. If Mr. Vargas insisted on leaving then the Medical Center had an obligation to explain to Mr. Vargas, especially since they were aware of his plans to fly, that his risks were so serious that he

could only leave with the understanding that it must be Against Medical Advice. The autopsy findings confirm that gastric ulcers were a complete misdiagnosis. The absence of stigmata of recent hemorrhage was overlooked evidence that informed the treaters that bleeding gastric ulcer was an incorrect diagnosis. Regardless, had the hospital informed Mr. Vargas of these risks and kept him in the hospital, he would not have been in a position to hemorrhage without available treatment, and the bleed would have been diagnosed and treated. The failure to comply with the standard of care increased the risk that Mr. Vargas would have suffered the catastrophic bleed and die from it.” Dr. Julie’s reports are attached hereto as Exhibits “B” and “C.”

David L. Hopkins, ASA, MAA is plaintiff’s actuarial-economic expert. Mr. Hopkins will testify as to Justin Vargas’ life expectancy, work life expectancy, future lost earning capacity and future lost fringe benefits. Mr. Hopkins’ report is attached hereto as Exhibit “A”.

G. Special Comment About Pleadings and Discovery

None at this time.

H. Summary of Legal Issues Involved and Legal Authorities Relied Upon

Standard medical negligence issues and supportive caselaw, including the MCARE Act.

I. Stipulations Desired

Authenticity and admissibility of medical records and billing.

J. Estimated Number of Trial Days

Five.

K. Other Matters Pertinent to the Case

The parties request access to the courthouse to set up the audio visual equipment in advance of opening statements.

L. Exhibits

- P-1 Records of Penn State Milton S. Hershey Medical Center
- P-2 Records of Carolina Medical Center
- P-3 Records of Mecklenberg EMS
- P-4 Records of York Pathology Associates
- P-5 Records of North Carolina Dept. of Health and Human Services Office of Chief Medical Examiner records
- P-6 Death Certificate
- P-7 Records of GI Associates of St. Augustine
- P-8 Records of Jawad S. Farhat, M.D. (Re: Justino Vargas)
- P-9 Records of Jawad S. Farhat, M.D. (Re: Joanna Vargas)
- P-10 Records of Leslie Feret, LCSW (Re: Joanna Vargas)
- P-11 Records of Flagler Hospital
- P-12 Records of Walgreens Pharmacy
- P-13 Records of Pain Management Associates
- P-14 Records of Orthopedic Associates
- P-15 Records of Tod Northrup, D.O./ Florida Sports Medicine Institute
- P-16 Radiology reports and studies
- P-17 Medical bills
- P-18 US Airways Ticket
- P-19 US Airways Flight and Airline Incident Report
- P-20 Funeral expenses

- P-21 Income tax returns
- P-22 Lien Documentation
- P-23 Audio CD entitled "The Story of Justin Vargas, Sr." (captured by grandson, Justin Phillip Vargas, only a few days before Justin Vargas, Sr. passed away.)
- P-24 Video DVD entitled "In loving Memory - I am Yours" (montage of pictures of Justin Vargas, Sr. and family throughout the years set to music.)
- P-25 Video DVD entitled "The Funeral Service"
- P-26 MSHMC Endoscopy Manual Table of Contents
- P-27 MSHMC Clinical Practice Manual Table of Contents
- P-28 Admission and Discharge, Policy Number 8-02-007
- P-29 EGD (Esophagogastroduodenoscopy) for Basic Diagnosis, Policy Number 8-01-001
- P-30 Endoscopy Standard of Care, Policy Number E-4CPMN
- P-31 Gastric Analysis, Policy Number 8-01-008
- P-32 Departure Against Medical Advice, Policy Number 413NAM
- P-33 Emergency Department Standard of Care, Policy Number E-8CPMN
- P-34 Endoscopy Standard of Care, Policy Number E-4CPMN
- P-35 Intermediate Care Unit Standard of Care, Policy Number I-13CPMN
- P-36 Chart Locator log
- P-37 Chart Access Log
- P-38 Screenshots of Endoscopy Diagnostic Exam Audit Trail log
- P-39 Diagnostic Exam and Diagnostic Report Audit Trail logs
- P-40 Pager Records of Charles E. Dye, M.D.
- P-41 Pager Records of Amy Welch, M.D.
- P-42 Pager Records Daniel Lotner, M.D.

- P-43 Pager Records of Simon R. Mucha, M.D.
- P-44 Pager Records Isabel Brea, M.D.
- P-45 Deposition transcript of Amy Welch, M.D.
- P-46 Deposition transcript of Daniel Lohner, M.D.
- P-47 Deposition transcript of Isabel J. Brea, M.D.
- P-48 Deposition transcript of Charles E. Dye, M.D.
- P-49 Deposition transcript of Simon Mucha, M.D.
- P-50 Deposition transcript of Joanna Vargas
- P-51 Deposition transcript of Justin Vargas, Jr.
- P-52 Deposition transcript of Jerry Ray
- P-53 Deposition transcript of David Vargas
- P-54 Deposition transcript of Adam Vargas
- P-55 Deposition transcript of Robert Thomas, Jr.
- P-56 Deposition transcript of Justin Philip Vargas taken 11/28/17
- P-57 Deposition transcript of Pastor Philip Cappuccio taken 11/28/17
- P-58 Expert Reports of Neil Julie, M.D.
- P-59 Curriculum Vitae of Neil Julie, M.D
- P-60 Deposition testimony of Neil Julie, M.D.
- P-61 Expert Report of David L. Hopkins, ASA, MAAA
- P-62 Curriculum Vitae of David L. Hopkins, ASA, MAA
- P-63 Expert Report of Loren Laine, M.D.
- P-64 Curriculum Vitae of Loren Laine, M.D
- P-65 Deposition testimony of Loren Laine, M.D.
- P-66 Expert Report of Stephen M. Lagana, M.D.

P-67 Curriculum Vitae of Stephen M. Lagana, M.D.

P-68 Deposition testimony of Stephen M. Lagana, M.D.

P-69 Various trial anatomicals

M. Special Verdict Questions:

Plaintiff's Proposed Verdict Slip is attached hereto as Exhibit "*D."

N. Defense counsel must file a statement that the person or committee with settlement authority has been notified of the requirements of and possible sanctions under Local Rule 16.2.

See defense memorandum.

O. Certificate of Concurrence with Counsel Concerning Depositions and Videotapes Pursuant to Local Rule 30.10

Counsel have not yet determined which, if any, depositions will be used at the time of trial other than for impeachment. Once the depositions have been identified, counsel for plaintiff will confer with counsel for defendant pursuant to Local Rule 30.10.

Respectfully submitted,

THE BEASLEY FIRM, LLC

Date: 25 May 2018

By: /s/James E. Beasley, Jr.
JAMES E. BEASLEY, JR.
Attorney for Plaintiff